

Docket No.: 2004P01641

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Before the Board of Patent Appeals and Interferences

Applic. No. : 10/590,757 Confirmation No.: 3767
Inventor : Holger Schererz, et al.
Filed : June 8, 2007
Title : Device for Stacking Flat, Flexible Postal Items in a
Stacking Compartment
TC/A.U. : 3653
Examiner : Michael C. McCullough
Customer No. : 24131

Hon. Commissioner for Patents

Alexandria, VA 22313-1450

BRIEF ON APPEAL

Sir:

This is an appeal from the final rejection in the Office action dated July 20, 2009, finally rejecting claims 5-11.

Appellants submit this *Brief on Appeal* including payment in the amount of \$540.00 to cover the fee for filing the *Brief on Appeal*.

Real Party in Interest:

This application is assigned to Siemens Aktiengesellschaft of München, Germany. The assignment will be submitted for recordation upon the termination of this appeal.

Related Appeals and Interferences:

No related appeals or interference proceedings are currently pending which would directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Status of Claims:

Claims 5-11 are rejected and are under appeal. Claims 1-4 were cancelled in an amendment dated August 25, 2006.

Status of Amendments:

No claims were amended after the final Office action. A *Response under 37 CFR § 1.116* was filed on September 21, 2009. The Primary Examiner stated in an *Advisory Action* dated October 8, 2009 that the request for reconsideration had been considered but did not place the application in condition for allowance.

Summary of the Claimed Subject Matter:

The subject matter of each independent claim is described in the specification of the instant application. Examples explaining the subject matter defined in each of the independent claims, referring to the specification by page and line numbers, and to the drawings, are given below.

Independent claim 5 reads as follows:

Independent device claim 5 recites a device for stacking flat, flexible postal items (*Figs. 1-3, ref. # 3, page 3, line 30*) in a stacking compartment (*Fig. 1, page 3, line 32*) in an upright position, comprising:
a stacking roller (*Figs. 1-3, ref. # 8, page 4, lines 3-4*) positionable in proximity of the stacking compartment (*Fig. 1, page 3, line 32*);
a covered belt system (*Figs. 1-3, page 3, line 34*) configured to feed the postal items (*Figs. 1-3, ref. # 3, page 3, line 30*) consecutively to the stacking roller (*Figs. 1-3, ref. # 8, page 4, lines 3-4*), wherein the belt system has a first belt (*Figs. 1-3, ref. # 4, page 3, lines 32-33*) and a second belt (*Figs. 1-3, ref. # 5, page 3, lines 32-33*);

a deflection roller (*Figs. 1-3, ref. # 11, page 4, line 22*) disposed on an axis and configured to deflect the first belt (*Figs. 1-3, ref. # 4, page 3, lines 32-33*) from the second belt so that the second belt (*Figs. 1-3, ref. # 5, page 3, lines 32-33*) continues to transport a postal item (*Figs. 1-3, ref. # 3, page 3, line 30*) to the stacking roller (*Figs. 1-3, ref. # 8, page 4, lines 3-4*);

a profile roller (*Figs. 1-3, ref. # 1, page 4, lines 19-20*) arranged on the deflection roller (*Figs. 1-3, ref. # 11, page 4, line 22*) and having a predetermined roller length, wherein the profile roller (*Figs. 1-3, ref. # 1, page 4, lines 19-20*) includes a plurality of diameter taperings (*Figs. 2-3, ref. # 1, page 4, lines 27-28*) over a length thereof; and

deflectable pressure means (*Figs. 1-3, ref. # 7 and 7a, page 4, lines 33-34 and page 5, lines 4-5*) disposed to press the postal items into the diameter taperings (*Figs. 2-3, ref. # 1, page 4, lines 27-28*) of the first profile roller (*Figs. 1-3, ref. # 1, page 4, lines 19-20*) to reduce a free flexible length of each of the postal items (*Figs. 1-3, ref. # 3, page 3, line 30*).

Grounds of Rejection to be Reviewed on Appeal

1. Whether or not claims 5, 6, and 8-11 are anticipated by U.S. patent No. 5,820,122 (Schneider) under 35 U.S.C. § 102(b).
2. Whether or not claim 7 is obvious over U.S. patent No. 5,820,122 to Schneider under 35 U.S.C. § 103(a).

Argument:

Whether claims 5, 6, and 8-11 are anticipated by Schneider under 35 U.S.C. §102.

Claims 5, 6, and 8-11 are not anticipated by Schneider under 35 U.S.C. §102:

Before discussing the prior art in detail, it is believed that a brief review of the invention as claimed, would be helpful.

Claim 5 calls for, *inter alia*:

a stacking roller positionable in proximity of the stacking compartment.

Claim 5 also calls for, *inter alia*:

a deflection roller disposed on an axis and configured to deflect the first belt from the second belt so that the second belt continues to transport a postal item to the stacking roller.

On page 2 of the final Office action dated July 20, 2009, the Examiner alleges that Schneider discloses a “device comprising a stacking roller (11)” and “a deflection roller (8) on an axis.”

The Examiner’s allegation is patently wrong. Particularly, Schneider discloses that the reference symbols “11” are discs that are disposed on the roller (9) for guiding the belts (6). The roller (8) has similar discs (10) for guiding the belts (5). Schneider discloses that the belts (6) are disposed on the outer circumference of the discs (11) and have a run that ends at the discs (11), as such the belts (6) do not continue on to transport postal items. Therefore, the discs “11” can reasonably be considered deflection rollers for the belts (6). Accordingly, because the discs (11) of Schneider are deflection rollers for the belts (6), the discs (11) of Schneider cannot reasonably be considered a stacking roller, as is explicitly required in claim 5 of the instant application. Moreover,

Schneider explicitly discloses that the belts (5, 6,) diverge at the same location in the direction of transport due to being guided about the cylindrical surface of the disks (10, 11) respectively (Fig. 1 of Schneider). Therefore, Schneider does not disclose that the belt (6) continues to transport a postal item to a position further than the position where the belts (5, 6) diverge from each other (or in other words further than the belt 5). However, in order to meet the limitation of claim 5 that the second belt continues to transport a postal item to the stacking roller, the belts (5, 6) would have to diverge at positions that are separated in the direction of transport (as shown in Fig. 1 of the instant application). Therefore, the roller (8) of Schneider does not read on the deflection roller, as recited in claim 5 of the instant application. Accordingly, the Examiner's allegation with respect to the discs (11) and the roller (8) of Schneider, are patently wrong.

Moreover, in the response to arguments on page 3 of the final Office action dated July 20, 2009, the Examiner alleges that "element 8 is a deflection roller that deflects the first belt (5) from the second belt (see Figure 1) and the second belt feeds to the stacking roller (11)."

The Examiner's allegation simply does not address the claim limitation as recited in claim 5 of the instant application nor does the allegation address appellants' arguments. Specifically, claim 5 explicitly recites that the deflection roller deflects the first belt from the second belt so that the second belt continues to transport a postal item to the stacking roller. In other words, the limitation requires that the run of the second belt continues beyond the point where the first belt diverges from the second belt so that the postal item is transported to the stacking roller. The limitation of claim 5 of the instant application, is not that the second belt itself "feeds" to (wraps around) the stacking roller, as alleged by the Examiner. As discussed above, Schneider discloses that the belts (6) wrap around the circumference of the discs (11) and diverge from the belts (5) about the discs (11) at the same position in the direction of travel of the postal items as the belts (5) deflect about the discs (10). Therefore, Schneider does not disclose that the deflection roller deflects the first belt from the second belt so that the second belt continues to transport a postal item to the stacking roller. The above-noted limitation can be achieved by a construction as shown in Fig. 1 of the instant application, but is not met by the construction as shown in Fig. 1 of

Schneider. Accordingly, the Examiner's allegation with respect to the rollers of Schneider, is patently wrong.

As seen from the above-given remarks, the reference does not show a stacking roller positionable in proximity of the stacking compartment, as recited in claim 5 of the instant application.

Moreover, as seen from the above-given remarks, the reference does not show a deflection roller disposed on an axis and configured to deflect the first belt from the second belt so that the **second belt** continues to transport a **postal item to the stacking roller**, as recited in claim 5 of the instant application.

In item 11 of the advisory action, the Examiner alleges that "applicant's argument that the belts 6 (disposed on the outer circumference of the discs 11) do not continue to transport is not persuasive because the belts are on the outer circumference of the discs and therefore do transport past the discs."

The Examiner's allegation is absurd and does not address appellants' argument. Specifically, the Examiner alleges that the stacking roller is

the disc “11” of Schneider. Since Schneider discloses that the belts (6) diverge from the belts (5) at a common point in the transport direction, the belts (6) do not transport the postal item any further than the belts (5) and thus the belts (6) do not continue to transport the postal items to a further roller after deflecting from the first belts (5). Moreover, from the Examiner’s allegation that it appears as though the Examiner fails to remember that he alleges that the disc (11) of Schneider reads on the stacking roller of the present invention. Accordingly, the Examiner’s allegation with respect to appellants’ arguments not being persuasive, is patently wrong.

Furthermore, in item 11 of the Office action, the Examiner alleges that “applicant farther (sic) argues Schneider diverges at the same location, in response applicant has not claimed different locations.”

The Examiner is completely wrong. More specifically, claim 5 explicitly recites that a deflection roller is disposed on an axis and configured to deflect the first belt from the second belt so that the second belt continues to transport a postal item to the stacking roller. Accordingly, claim 5 does indeed claim while the run of the first belt is diverted about the deflection roller, the second belt must have a run

that continues on to transport the postal item to the stacking roller 8 where it is deflected about an unlabeled roller (Fig. 1 of the instant application). Therefore, the Examiner's allegation with respect to not claiming different locations, is completely wrong.

As seen from the above-given remarks, claim 5 is allowable over Schneider. Since claim 5 is allowable over Schneider, dependent claims 6 and 8-11 are allowable over Schneider as well.

Whether claim 7 is obvious over Schneider under 35 U.S.C. §103.

Claim 7 is not obvious over Schneider under 35 U.S.C. §103:

Since claim 5 is allowable over Schneider, dependent claim 7 is allowable over Schneider as well.

Based on the above-given remarks, the honorable Board is therefore respectfully urged to reverse the final rejection of the Primary Examiner.

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Brief on Appeal dated 12/21/09

If an extension of time is required for this submission, petition for extension is herewith made. Any fees due should be charged to Deposit Account No. 12-1099 of Lerner Greenberg Stemer LLP.

Respectfully submitted,

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Claims Appendix:

5. A device for stacking flat, flexible postal items in a stacking compartment in an upright position, comprising:
 - a stacking roller positionable in proximity of the stacking compartment;
 - a covered belt system configured to feed the postal items consecutively to the stacking roller, wherein the belt system has a first belt and a second belt;
 - a deflection roller disposed on an axis and configured to deflect the first belt from the second belt so that the second belt continues to transport a postal item to the stacking roller;
 - a profile roller arranged on the deflection roller and having a predetermined roller length, wherein the profile roller includes a plurality of diameter taperings over a length thereof; and
 - deflectable pressure means disposed to press the postal items into the diameter taperings of the first profile roller to reduce a free flexible length of each of the postal items.
6. The device of claim 5, wherein the taperings of the profile roller are distributed over the roller length so that upper edges of the postal items

of a permitted item format do not protrude beyond a defined maximum dimension so that an opening of a postal item is avoided above a highest tapering covered by the postal item.

7. The device of claim 5, wherein the deflectable pressure means include deflectable pressure rollers, which can be pressed with spring pressure against the taperings of the profile roller, and wherein the pressure rollers have smaller diameters than the taperings of the profile roller.

8. The device of claim 5, wherein the deflectable pressure means include a profiled pressure roller having a profile that corresponds to a profile of the profile roller, wherein the profiled pressure roller is disposed such that diameter taperings thereof are located at heights of untapered sections of the profile roller.

9. The device of claim 5, wherein a pressure force of the deflectable pressure means is selected to avoid damaging stiff postal items by deforming them.

10. The device of claim 5, wherein each of the taperings extend in a circumferential direction about the profile roller.
11. The device of claim 5, wherein the deflectable pressure means include spring-biased deflectable pressure rollers, each of the taperings having a respective one of the spring-biased deflectable rollers disposed opposite thereto.

Evidence Appendix:

No evidence pursuant to §§ 1.130, 1.131, or 1.132 or any other evidence has been entered by the Examiner and relied upon by appellant in the appeal.

Related Proceedings Appendix:

No prior or pending appeals, interferences or judicial proceedings are in existence which may be related to, directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

Accordingly, no copies of decisions rendered by a court or the Board are available.